

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARREN HARIS,

Plaintiff,

1:05-CV-00003 ALA P

vs.

Dr. KIM, et al.,

Defendants.

ORDER

On January 3, 2005, plaintiff Darren Harris, a prisoner proceeding *in forma pauperis*, filed this civil rights action under 42 U.S.C. § 1983. Mr. Harris alleges in his complaint that his Constitutional rights were violated when officials of Corcoran State Prison forced him to clean a kitchen with “corrosive powderwash soap,” prison medical personnel denied him treatment for his resulting injuries, and funds were stolen from his prison trust account. Mr. Harris’s initial complaint named thirty-eight defendants. On August 13, 2007, the court ordered that service was appropriate as to eight of the defendants, dismissing the claims against the remaining defendants without prejudice. Mr. Harris filed an amended complaint on November 5, 2007, naming defendants Swarm, Cisneros, Tiernan, Rush, Hobbs, Jones, Cruz, Lowden, Smooth, Brook, Skribner, Williams, Grannis, Castro, Molina, Clark, Klarich, Kim, Greaves, Castillo, Crawford, Wortmen, and Olivarria. Mr. Harris names all defendants in both their individual and

1 official capacities.

2 I

3 Under 28 U.S.C. § 1915A, this Court is obligated to “review, before docketing . . . or . . .
4 as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks
5 redress from a governmental entity or officer or employee of a governmental entity,” and to
6 “dismiss . . . any portion of the complaint, if the complaint-(1) is frivolous, malicious, or fails to
7 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
8 who is immune from such relief.” 28 U.S.C. § 1915A(a)-(b). This Court must therefore
9 determine whether service is proper as to each of the numerous defendants named in Mr. Harris’
10 complaint. The Court must also determine, with respect to each defendant, whether the
11 complaint is frivolous or fails to state a claim.

12 “To sustain an action under section 1983, a plaintiff must show (1) that the conduct
13 complained of was committed by a person action under color of state law; and (2) that the
14 conduct deprived the plaintiff of a federal constitutional or statutory right.” *Hydrick v. Hunter*,
15 466 F.3d 676, 689 (9th Cir. 2006) (quoting *Wood v. Ostrander*, 879 F.2d 583, 587 (9th
16 Cir.1989)). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
17 meaning of 1983, if [that person] does an affirmative act, participates in another’s affirmative
18 acts, or omits to perform an act which [that person] is legally required to do that causes the
19 deprivation of which complaint is made.” *Id.* (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th
20 Cir.1978)). There is no respondeat superior liability under § 1983, and a person can only be
21 subject to § 1983 liability for the acts of others “[i]n limited circumstances.” *Id.* “[A] supervisor
22 is liable for the constitutional violations of subordinates, ‘if the supervisor participated in or
23 directed the violations, or knew of the violations and failed to act to prevent them.’ “ *Id.* (quoting
24 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.1989)).

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26 II

1 This court concluded in its August 13, 2007 order that Mr. Harris's complaint adequately
2 alleges claims pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b) against named defendants
3 Olivarria, Castro, Molina, Williams, Clark, Kim, Klarich, and Lowden. This court reasoned:

4 It specifies particular actions allegedly committed by each of those defendants, which
5 allegedly deprived Mr. Harris of federal Constitutional rights. Specifically, Mr. Harris
6 asserts that defendants Olivarria, Castro, Molina, Williams, and Clark ordered him to
7 clean the kitchen with the corrosive soap, that Dr. Kim refused to provide him with
8 needed medical treatment, that defendant Lowden intentionally interfered with certain
9 disciplinary proceedings against him and caused him to be reassigned to a dangerous
10 assignment, and that Dr. Klarich falsified information about his medical condition. If the
11 allegations of the complaint are proven, Mr. Harris has a reasonable opportunity to
12 prevail on the merits of this action as to those defendants.

13 Accordingly, Mr. Harris has sufficiently pled causes of action against defendants Castro,
14 Molina, Olivarria, Williams, Clark, Kim, Klarich, and Lowden.

15 III

16 Next, the court must determine whether Mr. Harris's amended complaint specifies
17 particular actions allegedly committed by each of the defendants, which deprived Mr. Harris of
18 federal Constitutional rights under the Eighth Amendment. The court will address, with respect
19 to each defendant, whether the amended complaint is frivolous or fails to state a claim.¹

20 To constitute cruel and unusual punishment in violation of the Eighth Amendment, prison
21 conditions must involve "the wanton and unnecessary infliction of pain." *Rhodes v. Chapman*,
22 452 U.S. 337, 347 (1981). A prisoner's claim of inadequate medical care does not rise to the
23 level of an Eighth Amendment violation unless (1) "the prison official deprived the prisoner of

24
25 ¹As noted above, the court has previously concluded that the claims against Castro,
26 Molina, Olivarria, Williams, Clark, Kim, Klarich, and Lowden have been sufficiently pled. This
section will only discuss the merits of the claims made against the remaining defendants named
in claim one.

the ‘minimal civilized measure of life's necessities,’” and (2) “the prison official ‘acted with deliberate indifference in doing so.’” *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002) (citation omitted)). A prison official does not act in a deliberately indifferent manner unless the official “knows of and disregards an excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Deliberate indifference may be manifested “when prison officials deny, delay or intentionally interfere with medical treatment,” or in the manner “in which prison physicians provide medical care.” *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, *WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). Where a prisoner is alleging a delay in receiving medical treatment, the delay must have led to further harm in order for the prisoner to make a claim of deliberate indifference to serious medical needs. *McGuckin*, 974 F.2d at 1060 (citing *Shapely v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985)).

Mr. Harris asserts that defendants Swarm (Compl. at ¶¶ 43-49, 54, 66), Cisneros (Compl. at ¶¶ 68-87), Hobbs (Compl. at ¶¶ 81), Cruz (Compl. at ¶¶ 81, 133-35), Rush (Compl. at ¶¶ 81, 105-08), Tiernan (Compl. at ¶¶ 81, 98-104), and Jones (Compl. at ¶¶ 148-59) ordered him to clean the kitchen with corrosive soap, causing him to incur burn injuries. Mr. Harris further alleges that these defendants were deliberately indifferent to his serious medical needs, as well as future injuries that may have occurred. Compl. at ¶ 209. If these allegations are proved, Mr. Harris has a reasonable opportunity to prevail on the merits of this action as to defendants Swarm, Cisneros, Hobbs, Cruz, Rush, Tiernan, and Jones.

Mr. Harris also alleges that Smooth (Compl. at ¶ 169), Brook (Compl. at ¶ 176), Skribner (Compl. at ¶ 177), and Grannis (Compl. at ¶¶ 178-79) violated his Eighth Amendment rights because they knew that Mr. Harris faced substantial risk of harm by being repeatedly exposed to the “powerwash.” Mr. Harris further alleges that these defendants disregarded that risk by failing to take reasonable measures to abate it. Compl. at ¶ 215. Specifically, Mr. Harris

1 claims that the defendants had knowledge of Mr. Harris's Inmate/Parolee Appeal form ("CDC
2 602"), which sets forth Mr. Harris's grievances. In light of the allegations in the amended
3 complaint, Mr. Harris has sufficiently pled Eighth Amendment claims against Smooth, Skribner,
4 Brook, and Grannis.

5 Mr. Harris also alleges that Doctor Greaves refused to provide Mr. Harris with the
6 appropriate medical treatment. Compl. at ¶ 199-203. He claims that he was denied all medical
7 care since November 3, 2002. Compl at 13. As a result, Mr. Harris claims that he suffered
8 physical and psychological injuries. Compl. at 13. Mr. Harris claims that Doctor Greaves acted
9 with deliberate indifference to Mr. Harris's medical needs. Compl. at ¶ 217. Therefore, Mr.
10 Harris's amended complaint sufficiently pleads a claim against Doctor Greaves.

11 Accordingly, Mr. Harris has sufficiently plead Eighth Amendment violations against the
12 following defendants: Greaves, Smooth, Brook, Skribner, Grannis. Swarm, Cisneros, Hobbs,
13 Cruz, Rush, Tiernan, and Jones.

14 III

15 Mr. Harris fails to allege that defendants Castillo, Wortmen, or Crawford did any
16 affirmative act, participated in any affirmative act, or omitted to perform any act they were
17 legally required to do, so as to cause a deprivation of his constitutional rights. The amended
18 complaint also fails to allege that any of those defendants participated in or directed violations of
19 Mr. Harris' rights, or knew of violations but failed to prevent them. The only allegations
20 pertaining to those defendants are so vague and conclusory as not to provide fair notice of the
21 basis of Mr. Harris's claims against them. *See Conley v. Gibson*, 355 U.S. 41, 47 (1957) ("all the
22 [Federal] Rules [of Civil Procedure] require is 'a short and plain statement of the claim' that will
23 give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it
24 rests."). Consequently, the Court dismisses Mr. Harris' amended complaint against those
25 defendants under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim, but permits Mr. Harris
26 leave to amend.

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff may proceed against defendants:

3 a. Greaves

4 b. Smooth

5 c. Brook

6 d. Skribner

7 e. Grannis

8 f. Swarm

9 g. Cisneros

10 h. Hobbs

11 i. Cruz

12 j. Rush

13 k. Tiernan

14 h. Jones.

15 2. Plaintiff's claims against defendants Crawford, Wortmen, and Castillo are dismissed
16 for the reasons discussed above, with leave to file an amended complaint within thirty-five (35)
17 days from the date of service of this Order. Failure to file an amended complaint will result in
18 these defendants being dismissed from this action; and

19 3. Upon filing an amended complaint or expiration of the time allowed therefore, the
20 court will make further orders for service of process upon some or all of the defendants.

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22 Dated: December 5, 2007

23 /s/ Arthur Alarcón
24 UNITED STATES CIRCUIT JUDGE
25 Sitting by Designation
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